

REMARKS

This application has been reviewed in light of the Office Action mailed July 7, 2009.

Reconsideration of this application in view of the below remarks is respectfully requested.

Claims 1 – 18 are pending in the application with Claim 1 being in independent form. Claims 19 – 27 have been previously withdrawn from consideration. By the present amendment, Claim 1 is amended. No new subject matter is introduced into the disclosure by way of the present amendment.

I. Rejection of Claims 1 – 18 Under 35 U.S.C. § 102(b)

Claims 1 – 18 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,699,798 issued to Hochman et al. (hereinafter, “Hochman”).

The present rejection states that Hochman discloses a means for generating a living body image having at least a scattering feature of a living body tissue as image information in col. 10, lines 43 – 45. Specifically, the cited passage discloses “...data representing one or more optical properties of an area of interest during a monitoring period or subsequent to administration of a dye.”

Hochman defines optical properties as including scattering, but no mention is made of displaying a relative scattering change representing a degree of nucleus variant and structure variant. Thus, Hochman fails to disclose a displaying a relative scattering change representing a degree of nucleus variant and structure variant, as recited in col. 70 of Applicant’s published application, and amended Claim 1. In addition, the teachings in Hochman do not suggest displaying a relative scattering change, as recited in Amended Claim 1.

Moreover, in Hochman, the change in an optical property is detected after injection of a dye, such as indocyanine, into the region under observation. The change displayed in Hochman is

dependent on the relative uptake rate of tumor tissue versus healthy tissue. In contrast, Applicant's claimed invention has no need for preliminary steps, such as dye injection, since the relative scattering change is determined by nucleus and structure variations between the tumor tissue and healthy tissue.

It is well-settled by the Courts that “[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company, et al., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir., 1984).

Therefore, as demonstrated above, because Hochman does not disclose each and every element recited in the present claims, Applicant respectfully submits that the rejection has been obviated. Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to Claims 1 – 18 under 35 U.S.C. § 102(b).

CONCLUSIONS

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 – 18 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,
/Thomas Spinelli/
Thomas Spinelli
Registration No. 39,533

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza - Ste. 300
Garden City, New York 11530
(516) 742-4343

TS/DAT:ab